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Washington, D.C. 20001

January 4, 2002

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, D.C. 20508

Re: Evaluation of Options
Investigation No. TA-201-73 Certain Steel Products

Dear Ms. Blue,

Canadian authorities wish to provide the Trade Policy Staff Committee with their views on the decisions facing and options available to the President further to the injury findings and recommendations for remedy by the U.S. International Trade Commission (ITC) under Section 203 of the Trade Act of 1974 in the above entitled investigation.

The Committee will be aware of Canada's views, as expressed in its various briefs to the ITC, on the commercial reality of the integrated North American steel market. Canadian authorities have outlined the possible consequences of the application of trade remedies on imports of those products regarding which the Commission has made an affirmative injury finding and on which remedies have been recommended. Canada wishes to remind the Committee of the obligations of the United States under the North America Free Trade Agreement (NAFTA) as they apply to remedies that may be applied further to an injury finding in a Section 201 safeguard investigation.

Finally, Canadian authorities wish to include their comments on the kind of remedy that would be appropriate if the President chose to apply remedies to subject imports from Canada. These latter comments are offered without prejudice to Canada's position on whether import action should be taken. These comments are included in Annex I to this letter.

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Canada/U.S. Steel Trade

As has been emphasized by Canada throughout this investigation, Canada/U.S. steel trade operates in the context of an integrated North American market that is grounded in longstanding commercial practice and subsequently encouraged, enhanced and consummated by the Canada/United States Free Trade Agreement (FTA) and the North American Free Trade Agreement (NAFTA). This reality, the benefits of which are beyond question for both countries, would be profoundly disrupted by the introduction of restrictions by the United States against any steel import from Canada. In this context, it is re-emphasized that total Canada/U.S. steel trade, which is roughly in balance, has grown from $2 billion in 1988, the year before the FTA went into effect, to over $7 billion in 2000. Further, Canada is the largest market by far for U.S. steel exports, accounting for over 60 percent of total U.S. steel exports in 2000 with exports to Canada valued at over $3.5 billion.

As has been stated in previous submissions, the appropriate standard for the consideration of whether to impose import restrictions on imports from Canada is not a narrow application of terms under NAFTA by which imports may be found injurious but a consideration of the overall effect on the market of such restrictions. Clearly, with the objectives of NAFTA having been attained, both countries must remain vigilant that they remain so.

North American Free Trade Agreement

Canada does not believe a remedy is economically justified in view of the circumstances of Canada/U.S. steel trade and may do more harm than good for the U.S. industry. In addition, Canada would note that the President, before taking import action against imports from another NAFTA country, is required by the North American Free Trade Agreement (NAFTA) and domestic legislation[1] to be satisfied that imports from a NAFTA country account for "a substantial share of total imports" and "contributing importantly" to the serious injury or threat of serious injury to the domestic industry. In essence, the President, while guided by the findings of the Commission in his decision with respect to imports from another NAFTA country, is not bound by those findings.

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Further, NAFTA also provides that no Party may impose restrictions on imports from the other that "would have the effect of reducing imports of such a good from a Party below the trend of imports of the good from that Party over a recent representative base period with allowance for reasonable growth"[2]. By definition, therefore, this NAFTA obligation requires the United States to accord imports from Canada differential treatment in the application of a safeguard measure. First of all, there is an obligation that requires the United States to ensure that imports are not reduced below the trend over a recent representative period. This would apply in the event of the application of either quotas or tariffs. Secondly, the determination of a recent

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1 Section 311(a) of the North American Free Trade Implementation Act

2 NAFTA Article 802:5(b)

representative period must be specific to imports of the NAFTA Party to which the remedy will be applied and not to the representative period for imports in general. Thirdly, there must be allowance for reasonable growth. Finally, Canadian authorities note that Canada will be immediately entitled to compensation for any additional duties as opposed to the three year time period stipulated in Section 201 itself. Further, Canadian authorities would note that NAFTA Parties may retaliate if Parties cannot agree on appropriate compensation.

The Products

On December 7, the Commission made remedy recommendations with respect to imports of the six specific steel products which it determined were contributing importantly to serious injury. These specific products are hot-rolled bars, cold-finished bars, welded tubular products other than OCTG, carbon steel flanges, fittings and tool joints, stainless bars and light shapes, and stainless flanges and fittings. Imports of these products into the United States from Canada accounted for 39 percent of the total steel imports from Canada by value and 44 percent of the total imports by volume. In 2000, U.S. imports from Canada totalled 5.2 million tons valued at more than $3.2 billion.

In commenting on the individual products from Canada for which remedy recommendations were made, Canadian authorities wish to underline the substantial degree of market integration and the threat posed to crossborder investments and the healthy two way trade by the application of restrictions on imports from one of the Parties.

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Hot-Rolled Bar & Light Shapes (G09)

Canadian authorities note that three of the six Commissioners recommended that imports from Canada be subject to additional duties while two others recommended that no import restrictions be applied to Canada and the sixth recommended an import quota. It is Canada's position that there is no strong or clear justification for the Administration to apply import restrictions on this product in these circumstances and expects the Administration to decline to apply any measure that may have been recommended to imports of this product from Canada, a position which is consistent with the views expressed by U.S. industry during the course of the ITC investigation. Canada would also note that, in its pre-hearing brief of September 10, 2001, to the Commission, it expressed the view that imports from Canada were not contributing importantly to any serious injury or threat of serious injury to U.S. industry, pointing out that the rate of growth of imports from Canada was appreciably lower than the growth rate of imports from all sources and all sources other than Canada in the period 1996 to 2000.

Cold-Finished Bar (G10)

As with hot-rolled bar and light shapes, Canadian authorities note that three of the six Commissioners recommended that imports from Canada be subject to additional duties while two others recommended that no import restrictions be applied to Canada and the sixth recommended an import quota. It is Canada's position that there is no strong or clear

justification for the Administration to apply import restrictions on this product in these circumstances and expects the Administration to decline to apply any measure that may have been recommended to imports of this product from Canada, a position which is also consistent with the views expressed by U.S. industry during the course of the ITC investigation. Canada would also note that, in its pre-hearing brief of September 10, 2001, to the Commission, it expressed the view that imports from Canada were not contributing importantly to any serious injury or threat of serious injury to U.S. industry, pointing out that the rate of growth of imports from Canada was appreciably lower than the growth rate of imports from all sources and all sources other than Canada in the period 1996 to 2000.

Welded Tubular Products Other Than OCTG (G20)

As Canada has noted previously, in both the injury and remedy phases of the ITC process, there is significant evidence

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of the damage that import restrictions would cause to the North American market for this product. The Commission heard much testimony about the integration of investment and trade between the two countries, the integrated nature of steel sourcing between the two countries, the integration of the pipe and tube marketplace in both Canada and the United States, and the effect that the consolidation of ownership and buying decisions in the two countries has had on the establishment of manufacturing on both sides of the border.

Canada's purpose in stating and amplifying these economic points goes beyond discussion of trade balances and economic factors to consideration of an essential reality - Canadian and U.S. production is integrally linked and damage to one is damage to the other. In this context, Chairman Koplan and Commissioner Miller stated that no domestic producer of welded tubular products took a position on the issue of the NAFTA exclusion. This is inaccurate and is a fundamental omission in the Commissioners' analysis. As Canada noted in its post-hearing brief of October 9, 2001, LTC Copperweld took an unambiguous position that import relief action would harm rather than benefit its operations. This point was made during its testimony during the ITC injury hearings[3].

Canadian authorities note that the Commission was tied with respect to the question of whether imports from Canada contributed importantly to the threat of serious injury suffered by U.S. industry. Further, and most importantly, two of the Commissioners[4] who voted affirmatively with respect to the issue of whether imports from Canada contributed importantly to the threat of injury appear to have based that finding on the fact that Canada accounted for a such a large percentage of total imports. In Canada's view, this effectively amounts to basing the second component of the NAFTA injury test (i.e. imports must be contributing importantly to serious injury or threat thereof) on the existence of the first (i.e. NAFTA imports account for a substantial share of total imports). In addition, there is no prospective evidence provided

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3 See page 2474 of Commission testimony

4 Chairman Koplan and Commissioner Miller

regarding the important contribution that imports from Canada will be making to the threat of serious injury to the U.S. industry. In fact, only retrospective evidence is cited, reference being made to imports from Canada over the last two years. In Canada's view, the finding is fundamentally flawed and cannot be sustained

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Finally, Canada would also note that, in its pre-hearing brief of September 10, 2001, to the Commission, it expressed the view that imports from Canada were not contributing importantly to any serious injury or threat of serious injury to U.S. industry, pointing out that the rate of growth of imports from Canada was appreciably lower than the growth rate of imports from all sources and all sources other than Canada in the period 1996 to 2000 and that the average value per ton of imports from Canada was significantly higher than the average value per ton of imports from all sources and all sources other than Canada.

In Canada's view, there is no strong or clear justification for the Administration to apply import restrictions on this product in these circumstances and expects the Administration to decline to apply any measure that may have been recommended to imports of this product from Canada.

Carbon Flanges, Fittings, and Tool Joints (G22)

Canada would note that, in its pre-hearing brief of September 10, 2001, to the Commission, it expressed the view that imports from Canada were not contributing importantly to any serious injury or threat of serious injury to U.S. industry, pointing out that the rate of growth of imports from Canada was appreciably lower than the growth rate of imports from all sources and all sources other than Canada in the period 1996 to 2000 and that the average value per ton of imports from Canada was significantly higher than the average value per ton of imports from all sources and all sources other than Canada.

In Canada's view, there is no strong or clear justification for the Administration to apply import restrictions on this product in these circumstances and expects the Administration to decline to apply any measure that may have been recommended to imports of this product from Canada.

Stainless Bars and Light Shapes (G25)

As with hot-rolled bar and light shapes and cold-finished bar, Canadian authorities note that three of the six Commissioners recommended that imports from Canada be subject to additional duties while two others recommended that no import restrictions be applied to Canada and the sixth recommended an import quota. Similar to its position on the products mentioned above, Canada believes that there is no strong or clear justification for the Administration to apply import restrictions on this product in these circumstances and expects the

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Administration to decline to apply any measure that may have been recommended to imports of this product from Canada, a position which is also consistent with the views expressed by U.S. industry during the course of the ITC investigation.

Canada would also note that, in its pre-hearing brief of September 10, 2001, to the Commission, it expressed the view that imports from Canada were not contributing importantly to any serious injury or threat of serious injury to the U.S. industry, pointing out that the rate of growth of imports from Canada was appreciably lower than the growth rate of imports from all sources and all sources other than Canada in the period 1996 to 2000.

Stainless Flanges and Fittings (G33)

It is Canada's position that there is insufficient evidence, even in terms of the Commission's votes on both injury and remedy, for the Administration to apply an import restriction on imports of this product from Canada. In this regard, the Commission was tied with respect to the issue of whether imports of this product from all sources were causing serious injury to the domestic industry. Further, Canadian authorities note that of those three Commissioners voting in the affirmative with respect to all imports, only two voted affirmatively as to whether imports from Canada were contributing importantly to the serious injury. Accordingly, only two out of the six Commissioners voting on the question of injury found that imports from Canada were contributing importantly to that injury.

Further, Commissioner Devaney, one of the two Commissioners who made affirmative findings with respect to imports from Canada, explicitly recommended that "The President should take into account the arguments made by the Government of Canada and Maas Flange Corporation during the remedy stage of this investigation."[5] In Canada's view, this amounts to a negative finding with respect to imports from Canada. The Administration does not, therefore, have sufficient justification to apply any remedy to imports from Canada.

Finally, the Administration should recall that Canada's pre-hearing brief on injury, submitted to the Commission on September 10, 2001, explained that imports from Canada were not contributing importantly to any serious injury or threat of

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serious injury to U.S. industry. That pre-hearing brief pointed out that the rate of growth of imports from Canada was appreciably lower than the growth rate of imports from all sources and all sources other than Canada in 2000. Canada's ITC pre-hearing brief also noted that the average value per ton of imports from Canada was significantly higher than the average value per ton of imports from all sources other than Canada. These facts were before the Commission when it reached its 4 - 2 vote and before Commissioner Devaney when he recommended that the Administration consider the arguments of the Government of Canada. Accordingly, the President should find that the "contribute importantly" requirement of the NAFTA has not been met and Canadian imports should be excluded from any trade restrictions on stainless flanges and fittings.

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5 Pages 576-577 of ITC report of December 19/01.

Yours sincerely

William R. Crosbie
Minister-Counsellor
Economic and Trade Policy

c.c. Ms. Donna Koehnke
Secretary
U.S. International Trade Commission

Annex I

For the reasons stated in the attached letter, Canada believes that there are serious flaws in the Commission's findings that import restrictions are justified on any of the products from Canada for which the Commission made remedy recommendations. However, should the President apply import restrictions to such products, the following comments are offered with respect to the nature of the remedy that should be applied.

Hot-Rolled Bar & Light Shapes (G09)

Canadian authorities believe that should the Administration apply restrictions to imports from Canada, a tariff rate quota based on import levels for 2000 plus a growth rate of at least three percent per annum (this being reasonable given the rate of growth in the market last year) should be implemented for imports from Canada. Canada takes no position on compensation that may be applicable until the Administration notifies Canada of its intentions and provides for consultations.

Cold-Finished Bar (G10)

Canadian authorities believe that should the Administration apply restrictions to imports from Canada, a tariff rate quota based on import levels for 2000 plus a growth rate of three percent per annum (this being reasonable given the rate of growth in the market last year) should be implemented for imports from Canada. Canada takes no position on compensation that may be applicable until the Administration notifies Canada of its intentions and provides for consultations.

Welded Tubular Products Other Than OCTG (G20)

Canadian authorities believe that should the Administration apply restrictions to imports from Canada, a tariff rate quota based on import levels for 2000 plus a growth rate of three percent per annum (this being reasonable given the rate of growth in the market over the past several years) should be implemented for imports from Canada. Canada takes no position on compensation that may be applicable until the Administration notifies Canada of its intentions and provides for consultations.

Carbon Flanges, Fittings, and Tool Joints (G22)

Canadian authorities believe that should the Administration apply restrictions to imports from Canada, a tariff rate quota based on import levels for 2000 plus a growth

rate of seven per annum (this being reasonable given the rate of growth in 2000) should be implemented for imports from Canada. Canada takes no position on compensation that may be applicable until the Administration notifies Canada of its intentions and provides for consultations.

Stainless Bars and Light Shapes (G25)

Canadian authorities believe that should the Administration apply restrictions to imports from Canada, a tariff rate quota based on import levels for 2000 plus a growth rate of six percent per annum (this being reasonable given the rate of growth in the U.S. domestic market was some 17.2 percent between 1996 and 2000). Canada takes no position on compensation that may be applicable until the Administration notifies Canada of its intentions and provides for consultations.

Stainless Flanges and Fittings (G33)

As noted above, it is Canada's view that the requirements of the NAFTA have not been met for the imposition of restrictions on imports of stainless steel flanges and fittings from Canada. However, if such restrictions are contemplated, the Administration should consider only a tariff rate quota, based on import levels for 2000, plus a growth rate of six percent per annum. Although there are no publicly available statistics on the precise growth in the U.S. domestic market for stainless flanges and fittings, the Commission's report indicates that the market for this product has grown during the period under review. Accordingly, Canada considers a six percent rate to be "reasonable growth" as required by NAFTA Article 802. Canada takes no position at this time on the compensation that may be applicable until the Administration notifies Canada of its intentions and provides for consultations.